IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 70-283

FREDERICK E. ADAMS, WARDEN,
CONNECTICUT STATE PRISON,
Petitioner,

vs.

ROBERT WILLIAMS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., AND THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AS AMICUS CURIAE IN SUPPORT OF PETITIONER.

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This brief, *amicus curiae*, is filed pursuant to Rule 42 of the rules of this Court. Consent to file it has been granted by the State's Attorney of Fairfield County, Connecticut, Counsel for Petitioner and by Mr. Edward F. Hennessey III Esq., Counsel for Respondent. Copies of these consents have been filed with the Clerk of this Court.

INTEREST OF THE AMICUS CURIAE

Americans for Effective Law Enforcement, Inc. (AELE), is a national, not-for-profit, non-partisan, non-political organization incorporated under the laws of the State of Illinois. AELE has received a tax exempt ruling from the Internal Revenue Service as an educational corporation. As stated in its by-laws, the purposes of AELE are:

1. To explore and consider the needs and requirements for the effective enforcement of the criminal law.
2. To inform the public of these needs and requirements, to the end that the courts will administer justice based upon a due concern for the general welfare and security of law abiding citizens.
3. To assist the police, the prosecution, and the courts in promoting a more effective and fairer administration of the criminal laws.

AELE believes that one of the most effective means of accomplishing these purposes is through the filing of briefs, *amicus curiae,* in cases of crucial significance with regard to the enforcement of the criminal law. In its *amicus* advocacy AELE seeks to represent the concern of the average citizen with the problems of crime and lawlessness in this country and to represent the desire of the vast majority of our citizens for effective law enforcement, commensurate with the protection of the rights of individuals. We further seek to articulate to the courts the very real practical problems which confront law enforcement officers in order that the courts may weigh such problems in deciding cases which will have a vital impact on the effectiveness of the law enforcement process as a whole.

As the 1967 Report of the President's Commission on Law Enforcement and Administration of Justice has pointed out:

> . . . many . . . decisions are made without the needs of law enforcement, and the police policies that are designed to meet those needs, being effectively presented to the court. If judges are to balance accurately law enforcement needs and human rights, the former must be articulated. They seldom are. Few legislatures and police administrators have defined in detail how and under what conditions certain police practices are to be used. As a result, the courts often must rely on intuition and common sense in judging what kinds of police action are reasonable or necessary, even though their decisions about the actions of one police officer can restrict police activity in the entire Nation. (Page 94)[1]

The articulation called for by the President's Commission is what AELE seeks to accomplish.

The International Association of Chiefs of Police, Inc., represents over 5,000 chiefs and top executives of police departments and other law enforcement agencies in all 50 states and in 85 foreign countries. The IACP serves the law enforcement profession and the public interest by advancing the art of police service. Its aims are to foster police cooperation and the exchange of information and experience among police administrators throughout the world, and to encourage adherence of all police officers to high professional standards of performance and conduct.

This case is one of extreme importance both to the police profession as a whole and to the average citizen concerned with crime. It is the first case dealing directly with the police procedure known as "field interrogation", or "stop and frisk", to come before this Court since its landmark

1. President's Commission on Law Enforcement and Administration of Justice (1967) p. 94.

decision in *Terry* v. *Ohio*, 392 U. S. 1 (1968). The issue of stop and frisk is vital to the police profession, both from the standpoint of the officer on patrol who needs to know what actions he may properly take to investigate persons whom he reasonably suspects of criminal activity and, perhaps more importantly, from the point of view of the safety of the police officer who, as a part of his duties, must confront such suspects in public places.

For those whose concern is with the effectiveness of the enforcement of the criminal law, stop and frisk also has a vital significance. O. W. Wilson has described the basic police function succinctly: "The core of the police purpose is to prevent unlawful acts".[2] This preventive function is, we believe, basic to the protection of the community and the stop and frisk concept, entailing as it does the right of a police officer to deal with suspicious persons and circumstances upon less than probable cause, is basic to the preventive function.

Additionally AELE appeared as *amicus curiae* in support of the State of Ohio in *Terry* v. *Ohio* in which this Court first granted to the police a carefully delineated right to stop and frisk persons reasonably suspected of criminal activity. As a result, we believe that we have a particular interest in the development of the law in this crucial area.

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2. O. W. Wilson, Police Administration (2nd Ed. 1950) McGraw-Hill, New York. Page 227. O. W. Wilson is the Dean Emeritus of the School of Criminology, University of California, Berkeley, and former Superintendent of the Chicago Police Department.

ARGUMENT

I.

THE SCOPE AND NATURE OF THIS BRIEF

Americans for Effective Law Enforcement, Inc., and the International Association of Chiefs of Police, Inc., *amicus curiae* in this case, will not reiterate the arguments made by Petitioner herein, although we unreservedly agree with and support Petitioner's contention that in this case the stop and frisk together with the consequent arrest and search of Respondent should be upheld as reasonable under the Fourth Amendment. We will, rather, focus upon three aspects of the stop and frisk issue now before the Court which we believe to be relevant not only to the issues in the instant case but, additionally, to the entire function of law enforcement in the areas of preventive police patrolling and crime prevention.

The core of our argument can be summarized by a quotation from the President's Commission on Law Enforcement and Administration of Justice describing the relationship of the police of this country to the rest of the criminal justice system:

> What is distinctive about the responsibility of the police is that they are charged with performing law enforcement functions where all eyes are upon them *and where the going is roughest, on the street.*[3] (emphasis added).

The "street", then, is the frame of reference for our argument herein. We will present information dealing with

3. President's Commission on Law Enforcement and Administration of Justice (1967): Task Force Report: "The Police" P. 1.

the practical aspects of police work involving day-to-day confrontations between law enforcement officers and criminal suspects which this Court's decision will surely affect. Our argument will be brief; it deals with three facets of practical police work in the stop and frisk context:

1. The *duty* of police officers who are involved in officer-suspect confrontations to take affirmative action for the protection of the public.
2. The *danger* to police officers involved in stop and frisk situations and the potential increase in this danger which would result if the decision below were upheld.
3. The fact of *non-abuse* by the police of the stop and frisk power since this Court's decision in *Terry* v. *Ohio*.

The ramifications for law enforcement inherent in the Court's decision in this case are obvious. We urge the Court to do as it did in *Terry* and consider the practicalities and problems of police work "on the street."

II.

A POLICE OFFICER HAS A DUTY TO INVESTIGATE SUSPICIOUS PERSONS AND CIRCUMSTANCES

Mr. Justice White, concurring in *Terry* v. *Ohio* stated, with regard to police-citizen confrontations on the street, that: "There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." 392 U. S. at 34. We agree wholeheartedly with this premise, but we submit that the police function goes one step further and that a policeman on patrol has an *affirmative duty* to investigate suspicious persons and circumstances.

This duty was implicitly recognized by Mr. Chief Justice Warren writing for a majority of this Court in *Terry* v.

Ohio. The Chief Justice first described the suspicious activities of Terry, Chilton and Katz, the suspects in that case, who were engaging in conduct which, to Detective McFadden's experienced eye, suggested that they were "casing" a certain store for a robbery. He then continued:

> It would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores to have failed to investigate this behavior further. 392 U. S. at 23.

Likewise Judge Hays dissenting from the holding below in the instant case stated with regard to the police officer's conduct:

> If the police officer had disregarded the information that a man sitting alone in a car in a high crime area at 2:15 in the morning had a gun stuck in his belt, his conduct, far from being reasonable and prudent would have been bizarre and erratic. *Williams* v. *Adams*, 441 F. 2d 395 (2nd Cir. 1971). *Accord*, *Ballou* v. *Massachusetts*, 403 F. 2d 982, 985 (1st Cir. 1968)

We submit, therefore, that, in situations such as those which arose in *Terry*, and in the instant case, when an officer reasonably suspects that one or more persons are armed in public; it is not optional with him to withdraw from the scene without taking some action. He has, rather, a duty to act to prevent an unlawful act and to protect the public. As Mr. Justice Harlan stated in *Terry* v. *Ohio*:

> . . . concealed weapons create an immediate and severe danger to the public and though that danger might not warrant routine general weapons checks, it could well warrant action on less than a 'probability.' 392 U. S. at 31-32.

In the instant case Sergeant Connolly was clearly not engaging in a "routine weapons check;" he had, rather, specific information that an individual sitting in a certain

automobile had in his possession a gun. In our view Sergeant Connolly, by approaching Williams to investigate the matter, took the only course of action open to a professional policeman; he was, in fact, acting to prevent precisely that "immediate and severe danger to the public" described by Mr. Justice Harlan.

Additionally, the actions of Sergeant Connolly, and of other police officers in similar situations, should be viewed in the context of the crime situation in this country today. According to the Uniform Crime Reports of the Federal Bureau of Investigation, crimes of violence—murder, robbery, forcible rape and aggravated assault—increased by 142 per cent during the decade 1960-1970. This marked rise of violent crimes is significant in a case dealing with stop and frisk for several reasons. First, crimes of violence are precisely those types of crimes which occur with frequency in the "on the street" milieu in which cases such as *Terry* v. *Ohio* and the instant case arise. Next, violent crimes are those in which a weapon is most frequently used. Finally, it is an uncontested fact that the minorities in this country, particularly the ghetto and inner city dwellers, are the primary victims of violent crimes, far out of proportion to their numbers.[4] The very prevalance of such crimes mandates the necessity for preventive police action such as that taken by Sergeant Connolly in the instant case.

Police patrols "on the street" constitute society's main defense against crimes of violence. If it were not the duty

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4. *See*, e.g., Crime Control Digest, March 25, 1970, page 7, in which is described a study by Stanford Criminologist Herbert L. Packer which concluded that ghetto residents are 100 times as likely to become victims of violent crime as their more affluent suburban counterparts. See also: "Black Crime Preys on Black Victims" an Associated Press study appearing in the *Denver Post*, August 23, 1970, page 35; and "Black Law and Order" in The National Observer, May 10, 1971, page 1.

of the police to take action to prevent such crimes, through preventive patrol action, this defense would be considerably weakened. As the President's Commission has noted:

> The heart of the police effort against crime is patrol—moving on foot or by vehicle around an assigned area, stopping to check buildings, to survey possible incidents, to question suspicious persons, or simply converse with residents who may provide intelligence as to occurrences in the neighborhood.[5]

We urge this Court not to restrain a police officer's investigative spirit which is premised upon his duty to act. While we recognize that this spirit cannot go unchecked and that police action premised upon motives of harassment or an inventive imagination cannot be condoned, we submit that in the instant case Sergeant Connolly's conduct was reasonable and proper; in fact, the oath which he took to protect the public would brook no less.

Against the background of a policeman's duty to take action to prevent crime and to protect the public and in view of the spiralling rates of violent crimes—particularly against the poor and the minorities—we urge the Court to view the instant case realistically and to sustain, as proper police procedure, Sergeant Connolly's actions.

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5. President's Commission on Law Enforcement and Administration of Justice, 1967. Task Force Report: The Police, page 1.

III.

THE DECISION BELOW IF UPHELD COULD MATERIALLY INCREASE THE DANGER TO POLICE OFFICERS DURING POLICE-SUSPECT CONFRONTATIONS

This Court has traditionally guarded the safety of law enforcement officers and has recognized the danger inherent in police work.[6] This was, basically, the rationale for the "frisk" in *Terry* v. *Ohio*. We submit that if the ruling below is upheld, it could quite conceivably place police officers, who are attempting to conduct themselves within the letter and spirit of this Court's pronouncements, in situations of extreme danger.

We have, in the previous section, postulated the duty of a policeman to act to investigate in cases such as this one. Consider the facts in the instant case. Sergeant Connolly received a tip from an informant whom he considered reliable that "a person seated in the vehicle was armed with a pistol at his waist. . ." *Williams* v. *Adams*, 441 F. 2d at 395. Sergeant Connolly clearly viewed it as his duty to investigate further and approached the suspect. Had he not made a protective "frisk" by removing the pistol from the suspect's waist, Connolly might today be dead.

The situation involving policemen being killed in line of duty was sufficiently grave in 1968 for this Court to take notice of the fact in *Terry* v. *Ohio*. Mr. Chief Justice Warren pointed out at page 24 that in 1966 fifty seven law enforcement officers were killed in the line of duty. *Today this figure has more than doubled*; in 1971 125

6. *See, e.g., Preston* v. *United States*, 376 U. S. 364, 367 (1964). "The rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer and prevent an escape . . ."

officers performing their duties were killed by criminal action.[7]

In *Terry* Mr. Chief Justice Warren stated of police killings:

> In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm. 392 U. S. at 24.

We submit that these words, and the import which they bear upon the safety of police officers, are even more compelling today.

The figures cited above from the FBI reports—125 police officers murdered in 1971—deal with *all* cases in which law enforcement officers were killed in the line of duty in a single year. This case involves the problems encountered in field interrogation or stop and frisk situations, i.e., those situations in which police officers make a face-to-face confrontation with one or more suspects. With this in mind we have turned to another source of information regarding police fatalities in order to present specific data concerning *only* those situations in which an officer-suspect or stop and frisk situation involved.

This source is the Annual Law Enforcement Casualty Summary published by the Police Weapons Center of the International Association of Chiefs of Police for the period

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7. Uniform Crime Reports, Federal Bureau of Investigation, 1971.

July, 1970 to June, 1971.[8] The Police Weapons Center collects and disseminates data relating to police officers killed or injured in the line of duty and publishes a yearly report. These reports, which are based upon a "fiscal" year which extends from July 1 to June 30 of the next year, give a more detailed account than do the F. B. I. reports of how each officer met his death; consequently we are able to separate police deaths in the stop and frisk type situation from other killings of policemen.

Of 99 law enforcement officers killed in the period July 1, 1970 to June 30, 1971, twenty-two officers—one in five—were killed in twenty separate stop and frisk type situations.

The following chart lists the pertinent facts in each case and these cases point up the high degree of danger to which a police officer is exposed in confrontations with persons suspected of criminal activity.[9]

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8. Annual Law Enforcement Casualty Summary, July, 1970 to June 1971, by Barry L. Battista and Gary S. Persinger. Published by the Police Weapons Center of the International Association of Chiefs of Police, Eleven Firstfield Road, Gaithersburg, Maryland 20760.

9. We have included both on-the-street and automobile confrontations since *Terry* involved the former while the instant case involves the latter. Traffic stops, we contend, are within the stop and frisk doctrine because the danger of unexpected attack is as great in these instances as it is in the typical *Terry* type situation.

Date	Location	Circumstance
7–26–70	DeSoto County, Mississippi	Suspects were stopped for a traffic violation after they had just burglarized a business.
8–11–70	Piqua, Ohio	Officer became suspicious of suspect and attempted to question him.
9–23–70	New York, New York	Officer was questioning suspect about possession of pistol.
9–28–70	Cleveland, Ohio	Suspects were stopped for traffic violation.
9–30–70	Atlantic City, New Jersey	Officer attempted to question suspicious man on the boardwalk.
11– 2–70	Antlers, Oklahoma	Officer questioning suspect.
11– 9–70	New York, New York	Officer was questioning suspect about impersonating a police officer.
12– 8–70	Compton, California	Suspect was stopped for questioning; had four outstanding warrants.
12–25–70	Sumter, South Carolina	Suspects were stopped for traffic violation.
12–28–70	San Diego, California	Officer was checking identification of suspect.
1–24–71	Pahokee, Florida	Suspects were stopped by officer while driving stolen car.
1–31–71	Bridge City, Texas	Traffic stop.

Date	Location	Circumstance
2–15–71	Mount Airy, North Carolina	Officer stopped suspect driving a stolen car.
2– 5–71	Navajo, Arizona	Deranged individual—2 officers were killed in separate incidents as they attempted to question a suspect.
2–20–71	St. John, Indiana	2 officers investigating suspects sleeping in a car who were wanted for kidnapping.
3–25–71	Malone, Texas	Suspects were stopped for traffic violation and had just committed a felony.
4–29–71	Washington, D. C.	Officer was questioning suspect wanted on bench warrant.
5–14–71	Farmington, Utah	Officer stopped suspects driving stolen car.
6–14–71	Oklahoma City, Oklahoma	Officers were questioning suspicious persons in auto.
6–25–71	Richmond, Virginia	Suspect stopped for traffic violation.

These stark and tragic descriptions of police killings have one factor in common: death struck the officers, with little or no warning, in cases of officer-suspect confrontations. The ruling of the lower court in the instant case points up the staggering dilemma faced by police officers who have reason to suspect that someone whom they are investigating is armed. On the one hand is the natural desire of a police officer to protect himself from being killed in incidents such as have been described in the above list of officers killed in stop and frisk situations. On the other hand the ruling below appears to tell an officer that *even if he has specific*

information that a suspect is armed, he may not lawfully frisk him for weapons. We urge this court to resolve the question in favor of the safety of the officer as it did in *Terry.* Any other holding will, we believe, significantly jeopardize further those who are in an already too dangerous profession.

IV.

THE STOP AND FRISK DOCTRINE ANNOUNCED BY THE UNITED STATES SUPREME COURT IN TERRY v. OHIO HAS NOT BEEN ABUSED BY LAW ENFORCEMENT OFFICERS

In June of 1968 this Court, in *Terry* v. *Ohio,* ruled that a law enforcement officer could properly stop and frisk persons where suspicious behavior leads a prudent police officer reasonably to suspect that criminal activity is afoot. This is true even though the officer might not have sufficient information to establish probable cause to arrest a given suspect. To this nation's law enforcement officers, *Terry* v. *Ohio* was a land-mark decision. It is safe to assume that the stop and frisk technique authorized by *Terry* has been used by every law enforcement agency in this country. Our final objective as *amicus curiae* is to demonstrate that while stop and frisk is widely used, generally speaking it has not been abused.

In *Terry* v. *Ohio,* the opponents of the stop and frisk procedure argued that the doctrine of stop and frisk would be "judicial abdication to police judgment,"[10] and that the courts could not control the procedure since an officer "may always 'reasonably suspect' he is in danger."[11] However, a review of state and federal stop and frisk cases decided during the years 1969, 1970 and 1971 indicates that these dire forebodings did not materialize into facts.

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10. See, the brief for the NAACP Legal Defense and Education Fund Inc. as *amicus curiae* in *Terry* v. *Ohio* at 47.

11. *Id.* at 51-52.

The source of our review of these cases was *Nedrud: The Criminal Law*[12] (hereafter referred to as *Nedrud*), a collection of criminal law cases which is published as a service for attorneys and others interested in the criminal law which classifies and digests cases of importance in this area. This publication lists: "Detention, Stop and Frisk" as a separate category of cases taken from federal and state reporters. During the years 1969, 1970 and 1971, *Nedrud* digested 272 cases in the stop and frisk category. Of the 272 cases digested, 222 opinions upheld the particular police procedure involved as proper. In only 50 cases did the courts find that stop and frisk procedures were violative of the Fourth Amendment's guarantee against unreasonable searches and seizures.

These figures, we submit, indicate an extremely high level of proper, non-abusive law enforcement, particularly when it is considered that 1) the police were dealing in a relatively newly defined area of the law enforcement process and 2) most stop and frisk confrontations are made on the spur of the moment in which a police officer has very little time to engage in lengthy considerations about the propriety or impropriety of his acts.

Further, of the fifty cases which were decided against the police, in seventeen of them the courts actually upheld the stop and the initiation of the frisk but ruled the evidence obtained inadmissible because of the *scope* of the frisk. Thus, in the final analysis, of the two hundred and twenty two cases digested in *Nedrud* only thirty three were held to be cases in which the *entire* officer-suspect confrontation was considered to be improper. This produces a ratio of almost 7-1 in favor of police procedures in the stop and frisk area which were sustained.

12. Nedrud, The Criminal Law, by Duane R. Nedrud and Marguerite D. Oberto. LE Publishers. 612 N. Michigan Avenue, Chicago, Illinois, 60611. Volumes for 1969, 1970, and 1971. A. Sec. 1.4 "Detention, Stop and Frisk."

We conclude from the foregoing figures that the stop and frisk power granted by this Court to the police in 1968 has not been abused. We believe this evidence to be relevant to the Court's determination in the instant case because this is the first case to come before this Court since *Terry* v. *Ohio*, which deals directly with the stop and frisk powers of the police. The particular relevance of such non-abuse lies in the fact that in this case we join counsel for the Petitioner in urging a reaffirmance of the doctrine of *Terry* v. *Ohio*. In effect, the Court, in *Terry*, reposed considerable trust in the professionalism and restraint of the police in on-the-street encounters. We believe that the police have vindicated this trust and that both in the instant case, and as a guide for future police conduct, *Terry* should be reaffirmed.

CONCLUSION

If the ruling below is affirmed, this Court will be taking a significant step backward from the doctrine enunciated in *Terry* v. *Ohio*. We submit that, based upon the clear evidence presented of non-abuse by the police of stop and frisk powers, such a step backwards is unwarranted. Rather, that backward step would effectively restrain the *proper* investigative spirit of the police—a spirit premised upon the duty of the police to take action to protect the public. Finally, if the ruling below were upheld, we believe that the danger faced by police officers in stop and frisk confrontations would be materially increased. For these reasons we urge that the ruling of the Court of Appeals for the Second Circuit in this case be reversed.

Respectfully submitted,

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